Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Service	)	WT Docket No. 96-162
	)	
Implementation of Section 601(d) of the Telecommunications Act of 1996	)	

REPLY TO OPPOSITION TO
PETITION FOR RECONSIDERATION

Pursuant to Section 1.429 of the Commission's rules, the Independent Telephone and Telecommunications Alliance ("ITTA") respectfully submits this reply to the opposition filed by MCI Telecommunications Corporation ("MCI") to ITTA's petition for reconsideration in the above-captioned proceeding.

I. INTRODUCTION

In its petition for reconsideration, ITTA commended the Commission for recognizing the statutory distinction between larger local exchange carriers ("LECs") and mid-sized telephone companies ("mid-sized LECs" or "Two Percent Companies"), but explained that this recognition was a first step in implementing the pro-competitive and deregulatory policies embodied in the Telecommunications Act of 1996.[1] In particular, ITTA explained that the Commission's decision to reverse 15 years of Commission policy by imposing a separate affiliate requirement on Two Percent Companies providing CMRS service is not supported by

[1] ITTA Petition for Reconsideration ("ITTA Petition") at 2.

justifiable policy or legal rationales. Indeed, in *Cincinnati Bell*, the court merely stated that the Commission should regulate similar services (PCS and cellular) similarly, not that it should regulate *dissimilar* LECs similarly.[2] Moreover, as ITTA explained, the Commission's sole justification for the reversal of its traditional deregulatory policy-- concern that a mid-sized LEC would use its "bottleneck facilities" to engage in discriminatory interconnection practices[3] -- simply did not apply to the provision of CMRS service by Two Percent Companies.[4] Accordingly, ITTA urged the Commission to exempt mid-sized LECs from the separate affiliate rule for the provision of CMRS service.

Only MCI filed an opposition to ITTA's petition for reconsideration -- no independent CMRS provider objected to relieving Two Percent Companies from the Commission's new separate affiliate rule. MCI argued that Two Percent Companies, like the larger LECs, possess market power in the local exchange market, and that this market power justifies the imposition of a separate affiliate rule.[5] MCI, however, does not allege a single instance of discrimination by a Two Percent Company against itself or any CMRS provider. Curiously, the only conduct MCI cites is its wireline, not wireless, interconnection negotiations

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2 *See Cincinnati Bell Telephone Co. v. FCC*, 69 F.3d 752 (6th Cir. 1995).

3 Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Service, *Report and Order*, WT Docket No. 96-162, FCC 97-392, at ¶¶ 37, 53, 72 (rel. Oct. 3, 1997) ("*Report and Order*").

4 ITTA Petition at 8-10.

5 Opposition of MCI Telecommunications Corporation to ITTA's Petition for Reconsideration ("MCI Opposition") at 6. MCI argues that SNET has sought to inhibit the development of competition in its local exchange service area. Inexplicably, MCI hinges its arguments entirely on its experience with SNET although SNET has announced its intention to merge with SBC Corporation. Should this merger be approved, SNET would no longer be considered a Two Percent Company under the 1996 Act.

with SNET, which are not the subject of this proceeding, which are open to widely varying interpretations and which have no relevance to the interconnection discrimination concerns the Commission has identified in this proceeding.[6] Indeed, the general lack of contentiousness over wireless interconnection agreements demonstrates the futility of the Commission's separate affiliate requirement, especially as applied to Two Percent Companies.

Moreover, MCI's argument suffers from the same flawed reasoning that led the Commission to impose the separate affiliate requirement on Two Percent Companies in the first place: it assumes that Two Percent Companies can translate any market power they may possess in the local exchange market into an ability to engage in interconnection discrimination against independent CMRS providers. This assumption is without basis. As explained below and in ITTA's petition, the following characteristics of the mobile telephone market more than adequately protect independent CMRS providers against possible interconnection discrimination by Two Percent Companies: (a) the limited geographic overlap of a mid-sized LEC's local exchange service territory with its CMRS operations, (b) the fact that most mid-sized LECs have their mobile switches located outside of their local exchange service territories and, thus, are dependent upon other LECs for handling their mobile traffic, (c) the technical difficulties mid-sized LECs have in attempting to discriminate against another CMRS provider's traffic because of the mobile nature of wireless traffic, and (d) the public filing requirement for interconnection agreements. MCI failed to provide any persuasive arguments to disprove any one of these market-based safeguards. As a result, the Commission should reject MCI's opposition to ITTA's

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6 MCI Opposition at 9.

petition for reconsideration and eliminate the separate affiliate requirement as it applies to Two Percent Companies.

II. MCI HAS NOT PROVIDED SUFFICIENT JUSTIFICATION FOR MAINTAINING A SEPARATE AFFILIATE REQUIREMENT ON TWO PERCENT COMPANIES PROVIDING CMRS SERVICE.

In ITTA's petition for reconsideration, it explained why a Two Percent Company could not engage in interconnection discrimination against independent CMRS operators, even if it possessed market power in a local exchange market. Unlike the larger LECs, which have geographically expansive local exchange service areas, Two Percent Companies provide local exchange service over a relatively limited geographic area.[7] As a result, the CMRS service areas of Two Percent Companies often exceed the boundaries of their local exchange service areas. Consequently, most Two Percent Companies that seek to provide CMRS service must negotiate interconnection agreements with LECs in adjacent localities. Because the CMRS operation of a Two Percent Company is dependent on the successful negotiation of these interconnection agreements, it would be unable to translate any market power it might possess in the local exchange market into an ability to engage in discriminatory interconnection practices.

MCI does not dispute that the limited geographic reach of a Two Percent Company's local exchange service area renders the viability of its CMRS operation dependent on completing interconnection agreements with adjoining LECs. MCI simply asserts that the "geographical reach of an ILEC or the number of its subscribers is not the determinant of its market power."[8] This assertion misses the point. Regardless of the effect that "geographic

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7 ITTA Petition at 9.

8 MCI Opposition at 6.

reach" has on market power in local exchange services, such reach has a profound effect on the ability of a mid-sized LEC to use that market power to engage in interconnection discrimination against independent CMRS operators. A mid-sized LEC must provide competitive interconnection terms and prices to adjoining LECs' CMRS affiliates if it seeks to promote its own CMRS service in the local exchange areas served by those LECs. In contrast, the CMRS service areas of larger LECs are more likely to be located entirely or substantially within their own local service areas, enabling them to engage in the type of interconnection discrimination that the separate affiliate requirement was designed to prevent. MCI fails to acknowledge this crucial difference between mid-sized LECs and the largest ILECs in its opposition.

In addition, most Two Percent Companies interconnect with LECs and locate their CMRS mobile switches in adjoining LEC markets upon whose facilities the Two Percent Company is dependent for routing, origination and termination of CMRS calls. As a result, the Two Percent Company stands in the same position as other CMRS providers vis-à-vis their interconnection arrangements. Given the relatively low volume of calls over the entire CMRS network that may either originate in, or terminate to, a Two Percent Company's territory, there is little, if any, incentive to discriminate against other carriers -- to do so would only harm the service quality its own CMRS customers receive.

MCI nevertheless argues that CMRS providers not affiliated with a LEC need the protection of a separate affiliate requirement.[9] This argument is also meritless. Unaffiliated CMRS operators are adequately protected against interconnection discrimination by the built-in safeguards of the wireless market described above and the requirement that all interconnection

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[9] Id. at 8.

agreements, including CMRS and wireline agreements, be filed with the appropriate state regulatory authority. Because of this requirement, CMRS providers not affiliated with a LEC can take advantage of the competitive terms and prices provided in interconnection agreements between a mid-sized LEC and adjoining LECs. Thus contrary to MCI's assertions, a separate affiliate requirement is unnecessary to ensure that all CMRS providers obtain non-discriminatory access to a mid-sized LECs local exchange network.

MCI suggests that, because larger LECs also are required to publicly file their interconnection agreements, "there is nothing about those requirements that differentiates mid-size LECs from the larger LECs."[10] Once again, MCI misses the point. Although it is true that larger LECs and mid-sized LECs both must file their CMRS interconnection agreements, what "differentiates" the larger LECs from the mid-sized LECs is the substance of those agreements. Because the CMRS operations of larger LECs are less dependent on the successful negotiation of interconnection agreements with adjoining LECs, the larger LECs are at least theoretically able to demand unreasonable prices for interconnection from *all* other parties. Public filing for those prices would not cure their unreasonableness. On the other hand, because a mid-sized LEC must offer competitive interconnection prices to its adjoining LECs, publicly filing those interconnection agreements enables CMRS providers not affiliated with a LEC to demand the same competitive prices. MCI's failure to acknowledge this distinction is a fundamental flaw in its argument.[11]

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10 MCI Comments at 8.

11 MCI also argues that the Commission already took into account interconnection requirements "in deciding to reduce the degree of separation" under the separate affiliate rule. MCI Comments at 8. While this may be true, it suggests only that the Commission may have been justified in relaxing the separate affiliate requirements for larger LECs. It

In addition, MCI's reliance on the notion that "increased competition from CMRS providers might well heighten ILECs' incentives to discriminate against such providers" as the justification for the separate affiliate requirement is misplaced.[12] Incentives to discriminate alone cannot justify the new regulatory burdens imposed by the Commission. Rather, there must be incentives coupled with an ability to discriminate -- an ability to discriminate that, as ITTA has demonstrated, Two Percent Companies do not possess. Indeed, the entire premise of MCI's argument is flawed. Namely, that the level of wireline local competition is the determinant of the need for the separate affiliate requirements. If this were the case, the Commission would have regulated rural LECs most heavily because they generally face the least competition. Yet the Commission did the exact opposite -- it removed any separate affiliate requirements from rural LECs.

III. CONCLUSION

MCI's opposition does not present any persuasive justification for maintaining the separate affiliate rule for Two Percent Companies offering CMRS service. MCI attempts to demonstrate that Two Percent Companies possess market power in the local exchange service market, but it provides no explanation of how Two Percent Companies could convert any market power they might possess to discriminate against independent CMRS providers. In short, MCI fails to refute ITTA's explanation of why Two Percent Companies, in fact, could not exercise market power in the CMRS market. Accordingly, ITTA urges the Commission to reject MCI's

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does not support MCI's position that the same requirements should be imposed on Two Percent Companies.

12 Id. at 8.

opposition to ITTA's Petition for Reconsideration and to exempt Two Percent Companies providing CMRS service from the separate affiliate requirement.

Respectfully submitted,

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February 20, 1998

CERTIFICATE OF SERVICE

I Andrea Rainey hereby certify that I have this 20th day of February, 1998 caused copies of the foregoing "Reply to Opposition to Petition for Reconsideration" to be served by hand on the following:

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